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18 Attorneys for the Plaintiffs

19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 **THE SUNRISE TRUST**
22 **and SUSAN KING,**

23 **Plaintiffs,**

24 } **Case No. 2:12-CV-0944-JCM-(PAL)**

25 **v.**

26 **MORGAN STANLEY & CO.
INC., MORGAN STANLEY
SMITH BARNEY LLC,
MORGAN STANLEY & CO.
LLC, MORGAN STANLEY
CAPITAL GROUP, INC.,
and TIMOTHY FRANK
McELROY,**

27 **Defendants.**

28 **PLAINTIFFS' MOTION FOR RECONSIDERATION**
OF THE COURT'S ORDER DATED JUNE 6, 2012

29 Pursuant to Federal Rule of Civil Procedure 60(b)(6), Plaintiffs respectfully
30 request that the Court reconsider its Order (Pacer document 4) issued earlier today

1 denying Plaintiffs' request for an extension of time (to and until August 6, 2012) to file a
2 memorandum of points and authorities in support of their motion to vacate¹ the
3 arbitration award that is the subject of this lawsuit. The Court's Order directs Plaintiffs
4 to file a memorandum of points and authorities no later than this Friday (June 8, 2012).
5 In support of this request, Plaintiffs rely upon the memorandum of points and authorities
6 set forth below and the accompanying appendix² attached herewith.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 Federal Rule of Civil Procedure 60(b)(6) permits a party to seek relief from a final
9 order. In this case, the Court has issued an Order denying Plaintiffs' request for an
10 extension of time to file a memorandum of points and authorities in support of their
11 recently filed motion to vacate an arbitration award. In denying Plaintiffs' request, the
12 Court acknowledges that Local Rule 1A 3-1 confers upon the Court "the discretion to
13 extend the deadline by suspending Rule 7-2(d)." However, the Court's Order states
14 that "the [C]ourt chooses not to exercise its discretion at this time, because [P]laintiffs
15 have not provided any reason to merit an additional two-months." Following this
16 statement, the Court acknowledges that Plaintiffs based their request upon the need "to
17 fully brief the issues, cite supporting statements from the transcripts, review all pertinent
18 documents and obtain a declaration from Susan King." Finding these reasons
19 unpersuasive, the Court has denied Plaintiffs' request. However, in doing so, the Court
20 notes that relief could be granted if "Ms. King has been very sick, making it unable to
21 effectively communicate with her." See Order, p. 3 (lines 9-10).

22 . . .

23

24 ¹ Pacer document 1.

25 ² Citations to the appendix contained in this motion appear as "App. ____."

26

1 **I. Additional Time Is Needed Based Upon Ms. King's Medical Condition**

2 Although not mentioned in the Court's Order, undersigned counsel notified the
3 Court in footnote three of its motion for extension (Pacer document 3) that "Ms. King is
4 **currently undergoing significant medical treatment.**" Admittedly, however, more
5 elaboration should have been provided by undersigned counsel to the Court on this
6 point. As demonstrated in an attached email (App. 1-2), Ms. King underwent surgery
7 on June 5, 2012 and is currently hospitalized but expected to be released on June 7,
8 2012 (App. 3). As is evident from the email, Ms. King has been battling significant
9 medical issues. See App. 1-2. Following release from the hospital, Ms. King will need
10 at least a week to recuperate before being able to meet with undersigned counsel.

11 App. 3.

12 In light of the foregoing, Plaintiffs respectfully request that the Court, in the
13 interests of justice, reconsider its Order denying Plaintiffs' request for an extension of
14 time to file a memorandum of points and authorities in support of the motion to vacate
15 that is pending before the Court. Any failure to properly or persuasively explain to the
16 Court the circumstances necessitating the request for extension was a deficiency on the
17 part of undersigned counsel and should not inure to the detriment of Plaintiffs.

18 **II. Should The Court Grant This Motion For Reconsideration, Plaintiffs
19 Will Modify Their Request For Extension To Seek The Earlier Date Of
20 June 29, 2012 Within Which Time To File A Memorandum In Support
21 Of The Motion To Vacate**

22 Following release from the hospital tomorrow, Ms. King will need approximately
23 one week to recuperate. During this period of time, it will be difficult for her to meet with
24 undersigned counsel. However, given the Court's Order rejecting Plaintiffs' request for
25 an extension of time until August 6, 2012 to file a memorandum of points and
authorities in support of the motion to vacate, Plaintiffs are willing to modify their earlier

1 request. Should the Court grant this motion for reconsideration, Plaintiffs will file the
2 requisite memorandum of points and authorities on or before June 29, 2012,
3 approximately 39-days earlier than previously requested.

4 **CONCLUSION**

5 In light of the foregoing, Plaintiffs respectfully request that the Court reconsider
6 its June 6, 2012 Order and permit Plaintiffs to file a memorandum of points and
7 authorities in support of their motion to vacate on or before June 29, 2012. As noted
8 above, and supported by the information contained in the appendix to this motion, Ms.
9 King has undergone major surgery and will need additional time before being able to
10 meet with undersigned counsel.

11 Respectfully submitted,

12 */s/ Ruth L. Cohen*
13 */s/ Paul S. Padda*

14 _____
15 Ruth L. Cohen, Esq.
16 Paul S. Padda, Esq.
17 COHEN & PADDA, LLP

18 _____
19 */s/ Todd M. Leventhal*

20 _____
21 Todd M. Leventhal, Esq.
22 LEVENTHAL & ASSOCIATES

23 _____
24 Attorneys for Plaintiffs

25 Dated: June 6, 2012

26 IT IS SO ORDERED:

27 Plaintiffs' motion for reconsideration of the Court's June 6,
28 2012 Order is granted. Plaintiffs shall file a memorandum of
29 points and authorities in support of the motion to vacate that
30 is pending before the Court on or before June 29, 2012.

31 *Xem C. Mahan*
32 _____
33 UNITED STATES DISTRICT JUDGE

34 Dated: June 8, 2012

APPENDIX

Paul S. Padda

From: Susi10@aol.com
Sent: Saturday, May 26, 2012 12:25 AM
To: ppadda@caplawyers.com
Subject: Re: update

Thank you sooo much....

In a message dated 5/25/2012 9:37:52 A.M. Pacific Daylight Time, ppadda@caplawyers.com writes:

Susan, you are an amazing person. I truly admire your courage.

I am going to be working on the complaint this weekend and my goal is to have it ready for filing no later than June 1st. I will email a copy to both you and Pete by this coming Tuesday. Call me anytime if you have questions.

Paul

From: Susi10@aol.com [mailto:Susi10@aol.com]
Sent: Friday, May 25, 2012 12:45 AM
To: ppadda@caplawyers.com
Cc: peteconsults@cs.com
Subject: update

I finally verified with the surgeon yesterday that my surgery will be June 5th....finally.

The last two weeks have been hectic. The insurance approved my surgery right away but they wanted to make sure I was cleared by my neuro Dr. due to the brain aneurysm and strokes. The ins. requested an MRI and the Dr. had some test done. It should have been done in a week..but just one delay after another. They would not do my MRI till they verified what was in my head. I finally have proof of what is in my head...for future tests...12 coils and one stent. I also had problems with the neuro Dr. sitting on things. When I get this behind me, I will definitely change Dr.s I was lucky to have a case manager to help get things done.

The surgeon has worked on me before and feels this should solve my colon problem. (me too) I am actually glad I have an extra week to just re-coop from these last two crazy weeks and mentally get ready. I am sure I will be fine.

I will be stuck in the hospital 3 - 6 days...hopefully less. (so June 5th - 8th?) I will be stuck in bed afterwards for a bit. I want to make sure if you need anything I can get it to you before I go in. Also If I need to sign

the complaint....I need to do it before June 5th, incase I get stuck in bed.

I look forward to moving forward...I appreciate both of your support. You both have been kind. I have a lot of people praying for me and this case. Feel free to call me even in the hospital. I will check my phone for messages even in the hospital. If I do not call back in a short time...please feel free to call me again just incase my phone is delaying a message.

Thanks,

Susan King

[REDACTED]

Declaration of Paul S. Padda

I, Paul S. Padda, do hereby declare as follows:

1. I am counsel of record in The Sunrise Trust, et. al. v. Morgan Stanley & Co., Inc., et. al., case number 2:12-CV-0944-JCM-(PAL) (Federal District of Nevada).
2. On June 5, 2012, I initiated the above-referenced litigation on behalf of Plaintiffs. The lawsuit involves a challenge to an arbitration award that was delivered on March 12, 2012. At the time the award was delivered, Plaintiffs were unrepresented by counsel.
3. On June 5, 2012, Susan King was admitted to the hospital for prearranged surgery. The two weeks proceeding the surgery were a hectic time for Ms. King as she attempted to deal with the logistics of the surgery and all the medical arrangements related to that event. Given Ms. King's schedule, I did not meet with her as I did not want to burden her with the stress of the pending litigation prior to her surgery.
4. On June 6, 2012, I spoke with Ms. King. She is currently recuperating in the hospital following her surgery and has indicated that she will be released on June 7, 2012. Following her release from hospital, Ms. King will need at least a week to fully recuperate before being able to meet with undersigned counsel to discuss the pending litigation.

The foregoing is true and correct based upon my personal knowledge.



Paul S. Padda, Esq.

Dated: June 6, 2012

1 CERTIFICATE OF SERVICE

2 In accordance with the Court's Local Rules, this is to certify that on June 6, 2012,
3 copies of "PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S
4 ORDER DATED JUNE 6, 2012" were placed in the United States mail (first-class,
5 postage prepaid) addressed to the following:

6 1. Michele D. Collins
7 Case Administrator
8 FINRA West Regional Office
9 300 South Grand Avenue, Suite 900
10 Los Angeles, California 90071-3135

11 (Representative of FINRA arbitration panel)

12 2. Anthony L. Valenzuela, Esq.
13 Morgan Stanley Legal & Compliance Division
14 101 California Street, 2nd Floor
15 San Francisco, California 94111

16 (Counsel for Timothy Frank McElroy, Morgan Stanley & Co.,
17 Inc., Morgan Stanley Smith Barney LLC, Morgan Stanley &
18 Co. LLC and Morgan Stanley Capital Group, Inc.)

19 *Is/ Paul S. Padda*

20 _____
21 Paul S. Padda
22 Cohen & Padda, LLP
23 Las Vegas, Nevada